

NICHOLAS & TOMASEVIC, LLP

Craig M. Nicholas (CA SBN 178444)*

Shaun Markley (CA SBN 291785)*

Jordan Belcastro (CA SBN 339570)*

225 Broadway, 19th Floor

San Diego, California 92101

Tel: (619) 325-0492

Fax: (619) 325-0496

Email: cnicholas@nicholaslaw.org

Email: atomasevic@nicholaslaw.org

Email: smarkley@nicholaslaw.org

Email: jbelcastro@nicholaslaw.org

**Pro Hac Vice*

Attorneys for Plaintiff,
CLINT PORTEOUS

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

EUGENE DIVISION

CLINT PORTEOUS, individually and on
behalf of others similarly-situated,

Plaintiff,

vs.

FLOWERS FOODS, INC., a Georgia
corporation; FLOWERS BAKERIES, LLC,
a Georgia limited liability company; and
FLOWERS BAKING CO. OF
PORTLAND, LLC, an Oregon limited
liability company,

Defendants.

Case No. 6:23-cv-01840-AA

**PLAINTIFF'S NOTICE OF
SUPPLEMENTAL AUTHORITY**

Plaintiff hereby provides notice of supplemental authority of a new opinion from the 10th Circuit Court of Appeals issued on November 12, 2024, *Brock v. Flowers Foods, Inc.* -- F.4th --, 2024 WL 4744443, at *1 (10th Cir. Nov. 12, 2024), attached to this notice, which supports Plaintiff's Opposition to Defendants' Motion to Compel Individual Arbitration, Strike Class and Collective Allegations and Stay the Proceedings. ECF No. 31. The slip opinion is attached as Exhibit 1.

Brock held that distributors for Flowers Foods, like the named Plaintiff here, are Federal Arbitration Act ("FAA") section 1 exempt transportation workers. *See* Ex. 1, 19-30. In so doing, it found that Flowers' distributors are akin to the Amazon last-mile delivery drivers that the First and Ninth Circuits have held meet the FAA section 1 carve out. *Id.*

While it did not reach the "contracts of employment" issue, *Brock's* analysis highlights that Flowers depiction of Distributors as "fundamentally local franchise business[es]" is, on a surface level review plausible, but ultimately belied by the "significant degree of control over Brock's operations" and "Flower's real interest" which is ensuring delivery of its baked goods to its "true customers" who are the large retail stores. *Id.* at 22-23.

The Court should follow *Brock's* analysis of the transportation worker issue and follow its lead on ignoring some of the facial "business" aspects of the contract Flowers drafted and instead see the contract for what it is – a contract of employment that secures control over a worker to perform work.

Respectfully submitted:
Dated: November 12, 2024

NICHOLAS & TOMASEVIC, LLP

By: /s/ Shaun Markley
Craig M. Nicholas (CA SBN 178444)*
Shaun Markley (CA SBN 291785)*
Jordan Belcastro (CA SBN 339570)*
225 Broadway, 19th Floor

San Diego, California 92101
Tel: (619) 325-0492
Fax: (619) 325-0496
Email: cnicholas@nicholaslaw.org
Email: smarkley@nicholaslaw.org
Email: jbelcastro@nicholaslaw.org

**Pro Hac Vice*

LEIMAN LAW, P.C.
Alan J. Leiman (OR SBN 980746)
P.O. Box 5383
Eugene, Oregon 97405
Tel: (541) 345-2376
Email: alan@leimanlaw.com

Attorneys for Plaintiff,
CLINT PORTEOUS